

REMARKS

This is a response to the Office action that was issued in connection with the above-identified patent application on October 6, 2006. Claims 1-15, 17-26, 35-39, 67-71, and 74-75 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,469,944 to Bocard et al. ("Bocard") in view of U.S. Patent No. 6,447,736 to Autenrieth et al. ("Autenrieth"). Claims 40-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bocard in view of Autenrieth, as applied to claim 38, and further in view of U.S. Patent No. 6,383,670 to Edlund et al. Claim 1 was further rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,221,117 B1 to Edlund et al. in view of Autenrieth. Claims 27-32, 34 and 72 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bocard in view of Autenrieth, as applied to claims 1 and 67, and further in view of U.S. Patent No. 5,175,062 to Farooque et al. ("Farooque").

Claim 1 was further rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,221,117, Autenrieth, the MPEP and case law, and again over claim 1 of U.S. Patent No. 6,719, 832 Autenrieth, the MPEP and case law. Claim 1 was also provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/016,807 in view of Bocard, Autenrieth, the MPEP and case law, and again over claim 1 of Application No. 11/247,744 in view of Bocard, Autenrieth, the MPEP and case law. Claim 1 was further provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/989,907 in view of Autenrieth, the MPEP and case law.

Rejections under 35 U.S.C. § 103(a)

Claims 1, 3-10, 13, 15, 25-26, 28, 31, 34 and 67-69 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Bocard, Autenrieth, the MPEP, case law, and in the case of claims 28, 31 and 34, additionally in view of Farooque. Specifically, the Examiner correctly recognizes that the cited references fail to disclose or suggest a fuel processor having at least one modular or cartridge-based component, as recited in at least independent claims 1 and 67. In view of this, the MPEP and case law were relied upon to support the obviousness rejections made in the Office action. Applicants submit that these rejections are not properly supported and should be withdrawn.

The above rejections are based on MPEP § 2144.04, which permits the patent office to rely on case law to reject claims under 35 U.S.C. § 103, but only if “the facts in a prior legal decision are sufficiently similar to those in an application under examination.” MPEP § 2144.04. The case law cited in the Office action is neither analogous nor does it involve similar facts to the claims under consideration. Therefore, no *prima facie* obviousness grounds have been established under case law.

The cited case, *In re Dulberg*, 289 F.2d 522 (CCPA 1961), deals with a lipstick holder having a detachable or separable cap. *In re Dulberg* involves a claim limitation directed to a “removable” as opposed to a “press fitted” cap to gain ready access to the space covered by the cap. The Court held that “if it were considered desirable for any reason to obtain access to the end of [the prior art’s] holder to which the cap is applied, it would be obvious to make the cap removable for that purpose.” *Id.* at 523.

In contrast, the rejected claims in the present application recite a modular or cartridge-based component of a hydrogen-producing fuel processor. As recited in

independent claims 1 and 67, a modular or cartridge-based component is “adapted to be accessed, removed from and replaced as a unit into an operational position.” A common understanding of “module” is a component that is interchangeable with others and/or adapted for assembly into units of differing size, complexity, or function. In view of the cited claim language and common understanding of the term, the claimed modular component is not limited to being merely “separable” or “detachable.” Accordingly, the facts of the cited case are not analogous to the present application and reconsideration is needed, as no *prima facie* obviousness rejection has been established based on case law.

As discussed above, no *prima facie* obviousness rejection has been established based on case law for independent claims 1 and 67. All other pending claims depend either directly or indirectly on independent claims 1 and 67, thus similarly requiring reconsideration. However, Applicants would like to specifically address the Examiner’s rejection of claim 1 and claims 40-42 in view of patents assigned to IdaTech LLC.

Claim 1 was rejected under 35 U.S.C. § 103(a) under various combinations of U.S. Patent No. 6,221,117 B1 to Edlund et al. and one or more other references. Applicants note that U.S. Patent No. 6,221,117 is a 102(e)-type reference being applied in a rejection under 35 U.S.C. § 103(a). Applicants note that both U.S. Patent No. 6,221,117 and the present application were, at the time the invention of the present application was made, owned by or subject to an obligation of assignment to IdaTech, LLC. The assignment of the invention of the present application to IdaTech, LLC is recorded in the United States Patent and Trademark Office under Reel 011603, Frame 0509. The assignment of U.S. Patent No. 6,221,117 to Northwest Power Systems, LLC is recorded in the U.S. Patent and Trademark Office under Reel 009981, Frame 0679. The name change

of Northwest Power Systems to IdaTech, LLC is recorded in the U.S. Patent and Trademark Office under Reel 010874, Frame 0499. As such, U.S. Patent No. 6,221,117 is disqualified from being used as a reference in a rejection under 35 U.S.C. § 103(a) against the claims of the present application. Accordingly, Applicants assert that the rejection of claim 1 should be withdrawn and the claim should be reconsidered.

Similarly, claims 40-42 were rejected under 35 U.S.C. § 103(a) under various combinations of U.S. Patent No. 6,383,670 to Edlund et al. and one or more other references. Applicants note that both U.S. Patent No. 6,383,670 and the present application were, at the time the invention of the present application was made, owned by or subject to an obligation of assignment to IdaTech, LLC. The assignment of U.S. Patent No. 6,383,670 to Northwest Power Systems, LLC is recorded in the U.S. Patent and Trademark Office under Reel 010316, Frame 0764. The name change of Northwest Power Systems to IdaTech, LLC is recorded in the U.S. Patent and Trademark Office under Reel 010872, Frame 0545. As such, U.S. Patent No. 6,383,670 is disqualified from being used as a reference in a rejection under 35 U.S.C. § 103(a) against the claims of the present application. Accordingly, Applicants assert that the rejections of claims 40-42 should be withdrawn and the claims should be reconsidered.

Rejections for obviousness-type double patenting

Claim 1 was rejected for obviousness-type double patenting over various patents and patent applications assigned to IdaTech in view of Bocard, Autenrieth, the MPEP and case law, specifically *In re Dulberg*. As argued above, the rejections should be


withdrawn because the facts of the cited case are neither analogous nor sufficiently similar to establish an obviousness argument based on case law under MPEP § 2144.04.

Conclusion

Applicants believe that the present application is in condition for allowance, in view of the above remarks. Accordingly, Applicants respectfully request that the Examiner reconsider the pending claims. If there are any remaining issues or if the Examiner has any questions, Applicants' undersigned attorney may be reached at the number listed below. Similarly, if the Examiner believes that a telephone interview may be productive in advancing prosecution of the present application, the Examiner is invited to contact Applicants' undersigned attorney at the number listed below.

Respectfully submitted,

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